

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IDA C. BEGAY, NITA R. AUGUSTINE,
KEE AUGUSTINE, KEE SANDOVAL,
GEORGE HARKES, JR., ALICE J. WHITE,
BEN C. YAZZIER, LOUISE J. YAZZIE, and
SHII SHI KEYAH ALLOTTEES ASSOCIATION
on their own behalf and on behalf of
all those similarly situated,

Plaintiffs

vs.

No. CIV 09-0137 JB/RLP

PUBLIC SERVICE COMPANY OF NEW MEXICO
(PNM), EL PASO CORPORATION, ENTERPRISE
PRODUCTS PARTNERS L.P., KINDER MORGAN,
NEW MEXICO GAS COMPANY, TRANSWESTERN
PIPELINE CO., LLC, TUCSON ELECTRIC POWER
COMPANY, WESTERN REFINING, INC., KEN
SALAZAR, SECRETARY OF THE INTERIOR, et al.,
and THE UNITED STATES OF AMERICA,

Defendants.

ORDER

THIS MATTER comes before the court on (i) The Federal Defendants' Motion to Dismiss and Memorandum in Support, filed July 1, 2009 (Doc. 44); (ii) the Federal Defendants' Motion to Strike, filed on July 1, 2009 (Doc. 45); (iii) Motion to Strike Special Master Report (Exhibit A) from Plaintiffs' Complaint, filed July 15, 2009 (Doc. 52); (iv) Defendant Transwestern Pipeline Company, LLC's Motion to Dismiss Plaintiffs' Claims for Ejectment or Removal of Pipeline and for Trespass for Lack of Jurisdiction filed July 15, 2009 (Doc. 53); (v) El Paso's Motion to Dismiss pursuant to Rule 12(b)(6), filed July 15, 2009 (Doc. 54); (vi) El Paso's Motion to Dismiss Pursuant to Rule 12(b)(1) and 12(b)(7), filed July 15, 2009 (Doc. 55); (vii) Motion to Dismiss for Lack of

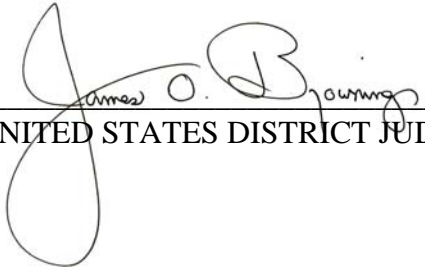
Subject Matter Jurisdiction, filed July 15, 2009 (Doc. 56); (viii) Joint Motion to Dismiss and Memorandum in Support of Defendants Enterprise Products Partners, L.P., Kinder Morgan, Transwestern Pipeline Company, LLC, Western Refining, Inc., Public Service Company of New Mexico, New Mexico Gas Company, Inc., and Tucson Electric Power Company Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(7), filed July 15, 2009 (Doc. 57); (ix) Joint Motion to Dismiss and Memorandum in Support of Defendants Enterprise Products Partners, L.P., Kinder Morgan, Transwestern Pipeline Company, LLC, Western Refining, Inc., Public Service Company of New Mexico, New Mexico Gas Company, Inc., and Tucson Electric Power Company Pursuant to Fed. R. Civ. P. 12(b)(6), filed July 15, 2009 (Doc. 58); and (x) the Plaintiffs' Motion for Leave to File Sur-Reply to Pages 11-16 of "El Paso's Reply Memorandum in Support of Motion to Dismiss Pursuant to Rule 12(b)(6)," filed December 10, 2009 (Doc. 82). The Court grants: (i) the Federal Defendants' Motion to Dismiss and Memorandum in Support (Doc. 44); (ii) Defendant Transwestern Pipeline Company, LLC's Motion to Dismiss Plaintiffs' Claims for Ejectment or Removal of Pipeline and for Trespass for Lack of Jurisdiction (Doc. 53); (iii) El Paso's Motion to Dismiss pursuant to Rule 12(b)(6) (Doc. 54); (iv) El Paso's Motion to Dismiss Pursuant to Rule 12(b)(1) and 12(b)(7) (Doc. 55); (v) the Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. 56); and (vi) the Plaintiffs' Motion for Leave to File Sur-Reply to Pages 11-16 of "El Paso's Reply Memorandum in Support of Motion to Dismiss Pursuant to Rule 12(b)(6)" (Doc. 82). The Court denies: (i) the Federal Defendants' Motion to Strike (Doc. 45); and (ii) the Motion to Strike Special Master Report (Exhibit A) from Plaintiffs' Complaint (Doc. 52). The Court denies as moot: (i) the Joint Motion to Dismiss and Memorandum in Support of Defendant Enterprise Products Partners, L.P., Kinder Morgan, Transwestern Pipeline Company, LLC, Western Refining, Inc., Public Service Company of New Mexico, New Mexico Gas Company, Inc., and Tucson Electric

Power Company Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(7) (Doc. 57); and (ii) the Joint Motion to Dismiss and Memorandum in Support of Defendants Enterprise Products Partners, L.P., Kinder Morgan, Transwestern Pipeline Company, LLC, Western Refining, Inc., Public Service Company of New Mexico, New Mexico Gas Company, Inc., and Tucson Electric Power Company Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. 58). As a result of these rulings, the Court has dismissed the entirety of the Plaintiffs' case.¹

IT IS ORDERED that (i) the Federal Defendants' Motion to Dismiss and Memorandum in Support (Doc. 44) is granted; (ii) the Federal Defendants' Motion to Strike (Doc. 45) is denied; (iii) the Motion to Strike Special Master Report (Exhibit A) from Plaintiffs' Complaint (Doc. 52) is denied; (iv) Defendant Transwestern Pipeline Company, LLC's Motion to Dismiss Plaintiffs' Claims for Ejectment or Removal of Pipeline and for Trespass for Lack of Jurisdiction (Doc. 53) is granted; (v) El Paso's Motion to Dismiss pursuant to Rule 12(b)(6) (Doc. 54) is granted; (vi) El Paso's Motion to Dismiss Pursuant to Rule 12(b)(1) and 12(b)(7) (Doc. 55) is granted; (vii) Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. 56) is granted; (viii) Joint Motion to Dismiss and Memorandum in Support of Defendant Enterprise Products Partners, L.P., Kinder Morgan, Transwestern Pipeline Company, LLC, Western Refining, Inc., Public Service Company of New Mexico, New Mexico Gas Company, Inc., and Tucson Electric Power Company Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(7) (Doc. 57) is denied as moot; (ix) Joint Motion to Dismiss and Memorandum in Support of Defendants Enterprise Products Partners, L.P., Kinder Morgan, Transwestern Pipeline Company, LLC, Western Refining, Inc., Public Service Company of New

¹ This Order disposes of the motions at issue. The Court will, however, at a later date issue an opinion more fully detailing its rationale for this decision. After the Court has issued its Memorandum Opinion, it will, at that time, enter a final judgment.

Mexico, New Mexico Gas Company, Inc., and Tucson Electric Power Company Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. 58) is denied as moot; and (x) Plaintiffs' Motion for Leave to File Sur-Reply to Pages 11-16 of "El Paso's Reply Memorandum in Support of Motion to Dismiss Pursuant to Rule 12(b)(6)" (Doc. 82) is granted.



UNITED STATES DISTRICT JUDGE

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-- and --

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